THE LEGAL PROCESSES INVOLVED IN CREATING BINDING BUT FAIR STRATEGIC ALLIANCES IN INTERNATIONAL BUSINESS

BY

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Introduction

In several developed and emerging economies of the world, it is now accepted that the efficacy of the law, its institutions and improved processes are imperative in surviving globalization. No doubt, globalization demands meeting international standards which protect investors, maintain their confidence by entrenching and enforcing transparency and good corporate governance. The unifying concept is 'country competitiveness', that is, positioning the jurisdiction much better in the global market to ensure increased economic growth.

In the case of Nigeria, democracy brought to the fore the importance of the above concept and practice. At inception in May 1999, the civilian government assured that it would operate an economy which is:-[1]

(i) Market oriented;
(ii) Private sector led;
(iii) Highly competitive internally, particularly, in areas of comparative advantage;
(iv) Technology - driven;
(v) Broad based;
(vi) Humane;
(vii) Open and
(viii) Internationally significant.

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The elements of the emphasis on a private sector - led economic growth for Nigeria include;

(i) Divesting in enterprises where the private sector can perform better;
(ii) Deregulation of the economy;
(iii) Reduction of bureaucratic bottlenecks;
(iv) Democratisation of economic decision making;
(v) Encouragement of *interaction of actors in the private factor to provide the driving force for economic growth and development.*
(vi) Acting as catalyst that provide the enabling environment for the private sector to thrive. This includes:

(a) *legal and regulatory frameworks to ensure the efficient operation of market (Italics added)*
(b) security to guarantee the safety of life and property;
(c) ensuring the indepence, integrity and sanctity of contracts;
(d) provision of infrastructures to facilitate the operations of the private sector;
(e) institutional re-establishment and re-orientation of the bureaucracy to make it a friendly welcoming facilitator of investment and business; and
(f) frontier shifting activities by government as initial steps to opening new grounds for the private sector to operate.

But beyond the above economic goals of democracy in Nigeria, the question invariably arises whether there exist in law and practice, legal processes that will facilitate the interaction of actors in the private sector to provide the requisite impetus for economic growth?

If the answer is in the affirmative, a more investment imperative question will arise: whether these legal processes are in accord with international standards necessary to attract foreign investors and relevant in ensuring that the Nigerian investment market remains competitive in the global village.

Further, beyond these two questions, another question will arise for determination: Whether there are other factors beyond the legal procedures which directly or indirectly impact on efforts in building binding but fair strategic alliances.

The above questions are considered in detail in this paper. It may therefore be safe to recaption this presentation as "*The Legal processes and factors affecting creation of binding but fair strategic alliances"*.

Nigeria: legal mechanisms for establishing business relations

The first question raised above underscores the need to x-ray the legal mechanisms for establishing enforceable but fair (to all concerned) business relations, interactions or alliances between Nigerian business community and foreign investors.

Legal provisions relating to foreign investment

(1) *Nigerian Investment Promotion Commission Act 1995;*[2] *Companies and Allied Matters Act 1990*[3] *and Foreign Exchange (monitoring and miscellenous provisions) Act 1955.*[4]

Section 17 of the NIPC Act 1995 confers on a non-Nigerian the right to invest and participate in the operation of any enterprise in Nigeria subject however to sections 18, 19 and 20. Both Nigerians and non-Nigerians are precluded from involving in any business relationship which relates to the 'negative list' and includes:[5]

(a) production of arms, ammunition etc,

(b) production and dealing in narcotics drugs and psychotropic substances;

(c) production of military and parliamentary wears and accoutrement, including those of the police and the customs, immigration and prison services;

(d) such other items as may be specified from time to time by the Federal Government.

A foreign enterprises intending to be involved in industry, project, undertaking or business in Nigeria must be registered with the Nigerian Investment Promotion Commission. Further, a person who intends to establish an enterprise shall do so in accordance with the provisions of the Companies and Allied Matters Act 1990 (CAMA). Part 11 of the CAMA provides for incorporation of companies and incidental matters. This includes: the right to form a company (section 18), capacity of individuals to form a company (section 20), types of companies that may be formed (section 21), contents of the Memorandum and Articles of Association (section 27), prohibited and

restricted names (section 30), documents on incorparation (section 35), registration by the Corporate Affairs Commission (CAC) and effect of such registration (section 34)[6].

Specifically, part 11, chapter 111 CAMA makes provisions for incorporation of foreign enterprises in Nigeria. Section 54 (i) obliges a foreign company to obtain incorporation as a separate entity in Nigeria. However, the exceptions are:

(i) any foreign company which before CAMA came into force was granted exemption from compliance with part x of the repealed Companies Act of 1968;

(ii) any foreign company excepted under any treaty to which Nigeria is a party.

Under section 56, a foreign company may apply to the National Council of Ministers of Nigeria for exemption if that foreign company belong to one of the following categories:-

(a) foreign companies invited to Nigeria by or with the approval of the Federal Government to execute any specified project;
(b) foreign companies which are in Nigeria for the execution of specific individual Loan projects on behalf of a donor country or international organisation;
(c) foreign government owned companies engaged solely in export Promotion activities; and
(d) engineering consultants and technical experts engaged on an individual specialist project with any of the governments in the Federation or any other agencies or with any other body or

person, where such contract has been approved by the Federal government.

Attention of a facilitator or an ally is drawn to section 56 (2) which contains the details to be included in the application for exemption.

Purchase of shares of a Nigerian company by foreign company.

Also the NIPC Act contain provisions on incentives for special investment (Sections 22 and 23), investment guarantee, transfer of capital, profit, and dividends. Section 24 guarantees against expropriation in consonance with international standards, as well as provisions on dispute settlement procedure (section 26).

Under section 15 of the Foreign Exchange (Monitoring and Miscellaneous Provisions Act 1995, investment of foreign currencies and capital in enterprises or securities in Nigeria is statutorily recognised.

Having considered the legal regulatory environment necessary to introduce a business in Nigeria, the legal relationship between a foreign enterprise and Nigerian counterpart in fostering an enforceable but equitable relationship comes into focus.

Specific mechanisms/processes of creating across border binding legal relations and instruments of ensuring its fairness

1. Establishing joint ventures:
   (a) Corporate joint ventures;
   (b) Non-corporate joint ventures.

2. Partnerships

3. Consortium and Similar agreements.

4. Sale of goods transactions: Principal /Agency Relationship.

5. Business transfer: Technology transfer and protection of intellectual property rights.

Joint Ventures: Concepts, analysis and practices.

For practical purposes, a joint venture may be defined as any arrangement whereby two or more parties co-operate in order to run a business or to achieve a commercial objective. In the sense of strategic alliances, joint ventures imply commercial arrangements or transactions between two or more economic enterprises which nevertheless retain their legal or corporate existence.[7]

Where parties to this kind of alliance are relatively equal as regards their involvement in the business notwithstanding their economic power but set out the venture for common goal, the romance may be described as a ***'horizontal joint venture'.*** But in a 'vertical joint venture', the parties in the alliance are engaged in different stages of the enterprise in their main or principal businesses. Both horizontal and vertical joint ventures are fundamental in deciding issues of fairness in competition between the romancing alliances.

Also the joint venture may be described as a ***conglomerate joint venture*** when the romance constitutes an entirely new enterprise for all the participants.

Why adopting a joint venture as a means of practicalising strategic alliance?

(i) Co-operation assists in reducing cost of manufacturing or other overheads. It achieves economies of scale.

(ii) Romancing parties may have complementary skills or resources to contribute to the joint ventures. Thus, one party may have the technical know - how while the other party has effective distribution networks and cheaper sources of raw materials.

(iii) Co-operation/alliances assist in limiting required capital investment for business and reduces exposure to risks easily identified by one of the parties or both. This *raison dentre* is more noticed on joint ventures involving high expenditure on research or necessary to effect large construction works.

(iv) Where the local investment climate is rough, a local alliance may be necessary to whether the storm since the local partner may have in his finger tips when to spend investment capital and obtain the desired result or when to hold on. This factor ought not to be reason for countries not to strive to have stable and conducive investment climates.

(v) Strategic alliances assist in sharing of research and development costs, enable enterprises to widen the sphere of their commercial activities to fields in which they have previously had no experience and counter cultural or even xenophobic barriers.

Role of joint ventures in fostering transnational corporations.

The joint venture has become the most effective means for actualising transactions, or undertaking co-operative enterprises between businesses and other bodies on a multi-national basis. Often regarded as the most important economic phenomeon in the latter half of the twentieth century,[8] this global form of alliance became a tool for realisation of foreign direct investment goals.

As has been extensively discussed elsewhere,[9] strategic alliances through transnational corporations brings to fore the following advantages:

i. Harnessing available raw materials;

ii. Avoiding tariffs, quotas, minimising cost and taking advantage of condusive investment policies;

iii. Likely technology transfer if properly agreed but emphasis on protection of intellectual property when not agreed;

iv. Product life cycle thesis;

v. Improved efficiency, growth and welfare.

The joint venture thus enables the forging of strategic alliances - it enables a multi-national corporation to enter into new markets.

Kinds of joint ventures and legal processes involved in establishing them.

(1) **The corporate joint venture.**

In Nigeria, this may be effected through incorporation of companies under the Companies and Allied Matters Act 1990. Here, the role of Nigeria's Corporate Affairs Commission under Section 7 of the Act is very relevant since statutorily, the Commission has the responsibility of registration, regulation and supervising the formation, management and winding-up of companies.

Under Section 21 (1) of the Act, a company may be :

(i) Limited by shares;

(ii) Limited by guarantee; or

(iii) Unlimited.

Any of the foregoing may be a private or a public company.

At the verge of creating an alliance, it is important for both parties to consult an expert for the purposes of incorporation. Experience has shown that some corporations (even multinational enterprises) retain the services of cheap non-professionals for the purposes of incorporation. The result has been cancellation of registration certificates where sharp practices were discovered. An examination of the incorporation documents often reveal inelegant drafting or

photocopying of inapplicable precedents on the Memorandum and Articles of Association. Parties must be fair to the legal entity and to their relationship at the very beginning by following the due processes of incorporation laws and requirements.

Amongst all types of companies, the Private Limited Liability Company is the most common vehicle for the creation of the corporate joint venture.The advantages are obvious:

(i) When the joint venture is incorporated as a company with limited liability, all participants in the joint venture are protected as shareholders;

(ii) Participants are protected from liability for the company's losses and thus, liability that arise in the course of the joint venture;

(iii) It will enable the joint venture to raise capital, own a property in it's own name and have capacity to sue and be sued.

Thus, the joint venture through this process takes benefit of the provisions of Section 37 of CAMA on the effects of incorporation which are the same advantages of incorporation known under the English and American Legal systems, although there may be exceptional circumstances where the corporate entity may be disregarded as was done by the American courts in ***United States v Milwaukee Refrigerator Transit Company***[10] ***and Taylor v Standard Gas v Electric Co.***[11] This was done by English courts in ***Gilford Motor Company Limited v Horne***[12] and attempted without much clarity by the Nigerian Court of Appeal in ***Adeniji V State***[13]

Regulation of relations between romancing parties

To ensure a binding or legally enforceable joint ventureship, it is important that parties at the very beginning understand their roles, the objectives of the joint venture and means of regulating their internal affairs. It is important that a professional knowledgeable in law and investment is consulted for the purpose of drawing up the objectives and internal regulations (*Memorandum and Articles of Association)* and also a well drafted and considered *joint venture agreement.* These important documents determine the relationship and rights of participants in the corporate joint venture.

Judicially, it has been accepted in ***Russel V Northern Bank Development Corporation Ltd. & ors*** [14]**,** that any company which constitutes the vehicle for the corporate venture can itself, be a party to any shareholders' or joint venture agreement.

On the part of the Directors in Nigeria, the duties at common law and statutory provisions contained in sections, 244, 257, 279-284 of CAMA are binding on directors of such an entity. While section 279 codifies fiduciary obligations on directors, section 280 ensures that the directors have duties as: Trustees, liable to render accounts and exercise their powers honestly.

The joint venture agreement is necessary to protect all parties, particularly, the minority from illegal or oppressive conduct of the majority[15]. Statutory provisions in Nigeria are contained in sections 299-313 of CAMA on protection of minority against illegal and oppressive conducts.

Having established a binding legal relationship, it is important that parties ensure fairness by avoiding conflict of interest situations. This may arise between the joint venture and the respective interest of shareholders. This is because, it is common in a corporate joint venture for the directors to be appointed by the shareholders in the venture. These directors have their respective interests in the enterprise. It is also not unusual for each shareholder to the joint venture to nominate an equal number of directors to the board of the joint venture company. The way out of this natural problem is for the articles of association of the joint venture company to provide for the relaxation of the common law rules now codified in Nigeria's CAMA and the equitable principles prohibiting a director from having interests which conflict with the interests of the company of which he is a director. To foster a fair strategic alliance, a director of a corporate joint venture must ensure he acts in the best interests of the corporation and the joint venture as a whole.

Transfer of shares

The Articles of Association of the corporate joint venture and the joint venture agreement must contain provisions for transfer and transmission of shares and provisions on companies dealing in their own shares in accordance with the provisions of sections 151-165 of the Companies and Allied Matters Act.

These enable any participant to withdraw from the joint enterprise without the need to terminate the venture. It also ensures the protection of beneficiaries of the shares.

Provision for warranties

It is only fair to all concerned that in cases where the corporate tool for the joint venture is an existing company, a party may either subscribe for shares by payment or transfer of his assets to the company in exchange of shares. Such a party should be given warranties and indemnities either in relation to the enterprise or the shares acquired. This will enable parties take fair assessment of the networth of the joint venture and also secure the romancing parties against unknown liabilities.

Filing of annual returns under the CAMA

These are contained in sections 370- 378 of CAMA. The provision are fair and the obligations therein contained may be regarded as a little price to pay for utilising advantages of conducting a joint venture through the medium of a company in Nigeria. Similar principles apply in the U.K and the United States of America.

Dividends and Profits

The aim of every business is to ensure returns on investment. Sections 379 - 386 of CAMA provide for these statutorily. Section 385 confers on shareholders the right to sue for their shares. The Nigerian regulatory environment has been fair to foreign investors in this respect. Section 25 of the NIPC Act 1995 guarantees against expropriation and no form of acquisition of a foreign enterprise by the Nigerian government is allowed except in the national interest or a public purpose under a law which makes provision for payment of fair and adequate compensation and guaranteeing a right of access to the courts for the determination of the investor's interest and amount of compensation which he is entitled.

Problems encountered in creating binding corporate joint ventureship

1. **Competition**

   This problem may be solved by addressing the issue at the negotiating stages or formation of the enterprise and taken care of properly under the article and joint venture agreement.

2. **Confidentiality and protection of intellectual property.**
   This should also be addressed at the early stages of formation and properly taken care of in the articles and joint venture agreement. Protection of intellectual property will be given a more detailed attention later in this paper.

3. **Possession of a solid foundation and structure.**

   It will be easier to sort out any misunderstanding and enjoy a binding but fair strategic alliance if at the very beginning the joint venture is given a foundation and a structure which gives legal and equitable effects to the commercial intention of the parties while as far as possible promoting transparency in the management and the control of the joint venture.

Partnership[16]

As an alternative to joint venture, a binding strategic alliance may be achieved through formation of partnership. Section 1 of the Partnership Act 1890 (which is a statute of general application in Nigeria and from which the partnership law, Cap 139 Laws of Lagos State was drawn) defines partnership as:

> 'The relation which subsists between persons carrying on business in common with the view of profit'.

Thus, for partnership to be used as a viable tool in forging strategic alliance, there must be:[17]

(i) a business
(ii) The business must be carried on in common and
(iii) must be carried on with a view of making profit

The advantage will include, the fact that it is less expensive to form, its account is not open to the public for inspection, avoidance of strict legal control as applicable to incorporate joint ventures, to mention a few. These notwithstanding, partners must ensure that they do not transform their joint venture as partnership unless specifically so intended. Thus, constituting it as a partnership directly imports the laws applicable to partnership to the venture.These will include:

(i) Principles established under section 5 of the partnership Act that each partner is an agent of the firm and his other partners and therefore binds the firm while acting as such.[18]

(ii) Joint liability of debts by the partners for all debts and obligations of the firm (sections 9-11);

(iii) application of the rules as to interests of partners; and

(iv) application of rules on retirement and dissolution.

(v) These partnerships cannot grant a floating charge over its asset as security to raise capital.

(vi) The partnership has no legal status independent of its members.

All the above may pose serious problems. It only accords with common sense and fairness that a joint ventureship should be preferred over partnerships in building strategic alliances. Investors are so advised.

Consortium Agreements

This is the simplest, based basically on contract between the parties and subject to the provision of the Companies And Allied Matters Act. It is an agreement whereby the parties to the joint venture undertake

to form an association or alliance as independent contractors as against being partners (as discussed above) or being share holders in a company registered under the Companies And Allied Matters Act (as also earlier discussed).

Problems will be avoided if from the very beginning, the consortium agreement clearly spells out the rights and duties of the parties and third parties who may deal with them. Here, a professional, no doubt, is required to ensure that the manifest intention of the parties are brought to the fore and legally but fairly or equitably protected. Some of the issues to be included amongst others will be:

(i) Scope and duration of the venture;
(ii) Obligation of parties;
(iii) financing machinery and mechanism for sharing of profit or bearing of losses;
(iv) must define the extent to which an individual party in the consortium may be liable for act or omission of others;
(v) must provide that each participant act as principal and may not bind the others and should contain provision for indemnities in favor of parties bound by the act of others.
(vi) must provide for joint liability where projects are undertaken by all parties; and
(vii) must contain provision on the property of the consortium.

Agency and Sale of Goods

Strategic alliances may also be forged, particularly where sale of products are involved by creating an agency relationship. This facilitates strategic alliances without each party necessarily having a joint venture, a partnership or a consortium agreement. The importance of agency in this respect is that the agent is able to effect the principal's legal position in respect of strangers to the relationship by making contracts on the disposition of property.

The agent may be a:
(i) General agent
(ii) Special agent
(iii) Mercantile agent
(iv) Factors agent
(v) Broker
(vi) Del credere agent
(vii) Auctioneer

The principal may either be disclosed or undisclosed and there are no legal formalities for creation of the relationship except that where the principal requires the agent to execute a deed on his behalf, the agent must be appointed by a deed.

The rights of the parties are contained in the general law except where the agency is reduced in writing or spells out the right and obligation of the parties.

Trade relationships also come into serious focus under transactions for sale of goods. The rights and duties of the parties contained in the Sale of Goods Act 1893 (statute of general application – same as Sale of Goods Law Cap 117 of Laws Lagos state). As applicable to the topic under review, an important aspect is banker's commercial credits which under commercial law, arises from international trade. The main aim is to facilitate import and exports by enhancing dealings between vendors and purchasers in different countries by prompt payment to the vendor on the one hand and delivery to purchaser on the other hand[19]

As in other systems, the rules guiding the subject has been based on the body of rules formulated by the International Chamber of Commerce (I.C.C. Rules) titled, the United Customs And Practice of Documentary Credits and usually revised as the need arise. This applies essentially to:

(i) Revocable and irrevocable credits;
(ii) Confirmed and unconfirmed credits;
(iii) Transferable and divisible credits; and
(iv) Open (clean) and documentary credits.

Beyond legal mechanisms to other factors necessary in creating binding but fair strategic alliance.

Enhanced capital market and effective regulatory frameworks as instruments for building binding and fair strategic alliance.

Globally, the quality of a regulatory environment is a major index necessary to attract investible funds. The Nigerian capital market has continued to respond to this global challenge. The

highpoint of the efforts include the commissioning of the Central Securities Clearing System (CSCS) in Nigeria on April 8,1997. Efforts of the Nigerian Stock exchange are therefore in accord with international standards as those concerted efforts may be traced to the 1988 G30 symposium held in London to review the clearing and settlement practices in the world's markets. All that the Nigerian stock exchange needs to do is to build on the success and the solid foundation on which the clearing system stands. Thus, in convincing a strategic business partner or ally to invest his funds in the Nigerian capital market, parties now are at ease that the system accords with international standards and is the best in sub-Saharan Africa.

But it may be difficult on the part of several Nigerian consultants to convince their foreign counterparts that the investments and securities laws in existence in Nigeria are truly fair or impartial. This is a major problem in attempting to build a binding and fair relationship. For example as observed elsewhere,[20] section 255(1) of the Investments and Securities Act 1999[21] contains powers in favour of the minister of finance likely to work hardship in efforts at instilling confidence in investors interested in building strategic alliance. It provides:

> 'If the minister is of the opinion that it is necessary or expedient so to do in the public interest,he may exempt any person or class of persons buying or selling securities or otherwise dealing with the securities market from the operation of the Act'.

The above power is questionable and should be deleted from the statute book. Other provisions[22] likely to hamper effective participation of investors contained in that Act should also be expunged from the statute book, particularly those provisions in conflict with constitutional rights.

Avoiding unethical trade practices.

To build a binding but fair strategic alliance, no party should be involved with unethical trade practices.

These include:

(i) Insider trading;
(ii) Obtaining by false pretences otherwise referred to as '419'; and
(iii) other economic crimes.

Insider trading is a problem facing all jurisdictions including the U.S, U.K, Nigeria, Canada to mention a few. The problem gave serious concern to the U.S senate in the mid 1930s while the Supreme court of the U.S judicially attacked this unwholesome breach of fiduciary responsibility by corporate insiders. These efforts are manifested in the *U.S senate report number 1455*[23] and decisions of the U.S Supreme Court in *United States v Chiaralla;*[24] *Diamond v Oreamuno*[25]*; Sec v Dirks*[26]and a host of other cases. The theme later became one of the axiomatic basis for the enforcement of the U.S Securities Exchange Act 1934.

In Nigeria, statutory provisions are now contained in sections 264,and 88-97 of the Investment and Securities Act 1999. But there have been no known prosecution in Nigeria so that it may be difficult to address the fears of the investors intending to create binding alliances in this respect. Similarly, in England, this has been a problem. It was only in1985 that the Company Securities (Insider Dealing) Act was promulgated replacing part v of the English Companies Law. The Act was later amended by the Financial Services Act of 1986. There have been only a single prosecution in England through *Attorney Generals Reference No 1 of 1985.*

The above illustrate the seriousness and the fact that it is a problem in all jurisdictions. Parties must try to foster confidence through transparency by avoiding acts likely to be construed as insider dealing.

The white-collar fraud popularly called 419 is another factor that may inhibit successful strategic alliances.

It is a problem that must be fought both on part of the party who makes the illicit proposal and the party who want to reap where he never sowed.

Technology Transfer

One of the objectives of a host ally is to ensure transfer of technology from the foreign investor to the host community. In Nigeria, the National office of Industrial Property regulated by the National Office of Industrial Property Act[27] is entrusted with the responsibility of monitoring on a continuing basis, the transfer of technology to Nigeria.

One of the functions of that body relevant to the topic is :

> 'b. The development of the negotiating skills with a view to ensuring the acquirement of the best contractual terms and conditions by Nigerian parties entering into any contract or agreement for the transfer of foreign technology.'

Other functions are contained in section 4 of the Act. All contracts in this respect are required to be registered with the NOIP. Thus, to have a binding agreement to transfer technology, the provisions of this law must be complied with.

The issue of provision on **arbitration under NOIP** Act should be given attention. Experience has shown that investors have raised the fairness of this provision in building strategic alliances. Under section 60(r) NOIP will not register any technology transfer contract where the transferee is obliged to submit to foreign jurisdiction in any controversy arising for decision concerning the interpretation or enforcement of any such contract or agreement or any provision thereof.

The answer to the question or query on the fairness of the provision lies in the fact that unless the transferee's business is substantial, he may not afford the cost of arbitration outside Nigeria. However, it is submitted that where parties voluntarily agree to be bound by foreign jurisdiction the law should have no business except on grounds of public policy to prohibit external arbitration. The legislature is called upon to have another look at section 6(r) of the NOIP Act.

It is further submitted that alternative dispute resolution mechanisms should be encouraged amongst parties seeking to create binding alliances. This is now well developed and largely used in the United States. One of the advantages of strategic alliance is the opportunity to learn from other systems. Although Nigeria's Arbitration and Conciliation Act[28] contain a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation and also makes applicable to Nigeria the Convention on Recognition And Enforcement of Arbitral Awards (New York convention) to any award made in Nigeria or in any contracting state arising out of international commercial arbitration, the fact is that the litigation psychosis remain alife in most parties. Often times, objections are taken to court over 'small points' that could be resolved amongst parties. Often times, the intention may be to tie up the matter with the recognized inherent delays in Nigeria's court system. This attitude must change to ensure fairness amongst strategic alliances.

Despite the congestion and delays in courts, Nigeria's Court of Appeal and Supreme Court must be commended in deciding or interpreting several cases on arbitration in ways conforming with international standards. Decisions of these courts abound[29].

Protection of intellectual property rights of investors.

It will only be fair that in forging a binding strategic alliance the intellectual property rights of the investor must be protected and respected. Intellectual property covers that body of legal rights which arise from mental and artistic endeavors. The applicable laws in Nigeria include:

(i) Copyright Act 1988 (amended in 1992 and 1999).

(ii) Trade Marks Act Cap 436 Laws of the Federation and its Regulation.

(iii) Patents and Designs Act (Cap 344 Laws of the federation 1990.

Although the above laws provide reasonable protection of industrial property rights including foreign persons and enterprises doing business in Nigeria, it remains important to have a properly harmonized intellectual property code.

The common law also applies in Nigeria on protection of confidentiality and actions for passing off.

Ensuring transparency in contract procurement processes as a viable means of strategic alliance.

To ensure a binding and fair relationship, all parties must ensure that in the process of procuring contract, all the requirements of law and established guidelines are met. A relationship founded on a contract dented with illegality certainly will shake the foundations of the relationship.

Corporate Governance as a tool for fostering enforceable but fair strategic alliances.

No doubt, corporate governance will promote strategic alliances. Corporate governance refers to the private and public institutions, including laws, regulations and accepted business practices, which altogether govern the relationship, in a market economy, between corporate managers and entrepreneurs ('Corporate insiders') on the one hand and those who invest resources on the other hand. Investors ofcourse ,include, suppliers of quity finance (shareholdres), suppliers of debt finance(creditors), suppliers of relatively firm – specific human capital (employees) and suppliers of other tangible and intangible assets that corporations may use and grow[30].

The OECD principles on corporate Governance include:

(i) The rights of shareholders that corporate governance framework should protect shareholder's rights.

(ii) Equitable treatment of shareholders (minority and foreign shareholders inclusive)

(iii) Should recognize the rights of stakeholders and encourage active co-operation.

(iv) Disclosure and transparency;

(v) Should ensure strategic guidance of the company, the effective monitoring of management by the board and the board's accountability to the company and shareholders involved in strategic alliance.

The implication is that as the *raison d'etre* of corporate governance, the increased importance of improved corporate governance is reflected in the size of the stock market. A vibrant stock market is a stimulus to effective strategic alliance.

Conclusions and further suggestions

It is now accepted without doubt that improved Legal processes are imperative in fostering a country's competitiveness in the global market. Improved legal processes imply enhanced laws, regulations and institutional frameworks to regulate business relations, particularly amongst investors and their partners in progress. Beyond these laws, there exist legal mechanisms for creating binding strategic alliances. These include, joint ventures, partnerships, consortium contracts, Agency and Sale of Goods.

However, beyond these legal mechanisms, several factors affect the success of business alliances. These include:

(i) enhanced capital market;
(ii) avoiding unethical practices;
(iii) ensuring transparency in contract procurement;
(iv) encouraging arbitration as a means of fair and faster dispute settlement mechanism;
(v) ensuring sound corporate governance to mention a few.

In addition the following suggestions are hereby proferred from a strategic research perspective:

(i) All must be actively involved in policy development processes. This will ensure that private sector interest and investment friendly ideas are harnessed;
(ii) Strive to establish regular fora for discourse. Here the efforts of the US commercial service and the Nigeria Stock Exchange must be commended;
(iii) Put the ideas into action.

(iv) Must strive to build a business enviroment and relationship that is transparent.

Finally, a paramount issue which must be in the heart of all investors is the need to encourage a stable democracy in Nigeria. As articulated elsewhere[31], political stability is one fundamental variable which is statistically significant in influencing foreign direct investment flows. Democracy and good governance are the planks on which investment and fair strategic alliances rest. This will facilitate economic stability and growth. The result will be enhanced strategic alliances prevailing in a peaceful and investment friendly climate. We must all rise to this challenge !!

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2. Act no 11 of 1995

3. Act no 59 of 1990

4. Act no 17 of 1995

5. See section 18 of NIPC Act 1995 (as amended by the NIPC) (Amendment Act) 1998.

6. See the English case of Salomon V Salomon & Co. (1897) A. C. 22 recognised and applied in Nigeria. For contrasting cases on disregarding the Legal entity, see the U.S. case of United States V Milwaukee Refrigerator Transit Company 142 F. 2d. 247, 255 ED Wis. 1905; Taylor V Standard Gas & Electric Co. 306 U.S. 307 (1939). Contrast the American cases with the Nigerian Court of Appeal decision in Adeniji V State (1992) 4 NWLR (part 234) 248 and the English case of Gilford Motor Company Limited V Horne (1933) Ch. 935.

7. See Common Market Law of Competition (4th edition, 1993) Ch11;. The Encyclopedia of Forms and Precedents, 5th edition 1998, reissue, Butterworths, London, P.147, Para 801.

8. Alan C. Shaporo, Multi-National Financial Management, 4th edition, P. 3.

9. See J.U.K. Igwe, Business – Government Relations in Nigeria, Policies, Laws and Institutional Frameworks, Chapter 19 (The impact of Transnatural corporations on foreign investment and Manpower Development in Nigeria – PP. 501 – 538.

10. Supra

11. Supra

12. Supra

13. Supra

14. To be supplied

15. See Kumagai Gm Co. Ltd V Zenecon Plc Ltd (1995) 2 SLR 297. For protection of the minority generally in Nigeria see: Edokpolo & Company Ltd V Sem – Edo wire industries Ltd (1984) NSCC 553, Okoya V Santili: (1994) N. W. LR. (Part 338) 25; Alex Oladele Elufioye & Ors V Ibrahim Halilu & 17 ors (1993) 6 NWLR (part 301) 570 and FA.TB & Anr V Ezegbu & Anr (1994) 9 NWLR (part 364) 149.

16. For detailed study on Partnership Business, see J.U.K. IGWE, Business-Government Relations in Nigeria, Policies, Laws and Institutional frameworks, 2000, PP. 388 – 400.

17. See Decision of the supreme Court of Nigeria in Ugorji V Uzoukwu (1972) A.N. LR 292.

18. See A.C.B Ltd V Babayemi (1969) A NLR 703.

19. See Guaranty Trust Company of New York V Henry (1918) 2 K. B. 623.

20. See J.U.K. Igwe, Business-Government Relations in Nigeria, policies, Laws and Institutional frameworks 2000 pp 461 – 462; J.U.K. Igwe, contribution on the proposed Investment and securities Bill 2001 presented at the National Assembly on March 13, 2002.

21. Act no 45 of 1999.

22. J.U.K. Igwe Ibid.

23. 73rd congress, 2nd session, 55 (1934).

24. 445 U.S. 222 (1980).

25. 24 N.Y. 2d, 424, 248, N. E 2d 910.

26. 108 S.C.E. 3255 (U.S. supreme Court 1983).

27. Cap 268 Laws of the Federation of Nigeria.

28. Cap 19 Laws of the Federation 1999.

29. See for example, the recent decision of the Supreme Court in 8 A. Savoia Limited V Sonubi (2002) 7 S.C (part 1) 36.

30. Definition by OECD Development center, Technical papers No. 180, Corporate Governance and National Development, Sept.2001, P.13; See further: Corporate Governance, an antidote to corruption and proceedings at the 10th International Conference against corruption, Prague, Czech Republic, 7-11, October 2001; J.D. Sullivan, Building sound Corporate Governance for Global Competitiveness, Center for International private Enterprise, U.S. Chamber of Commerce, November 17, 2000.

31. J.U.K. IGWE, Business – Government Relations in Nigeria 1854 – 2003 Policies, Laws and Institutional Frameworks, Law Development, Research, Publications and Consultancy Limited, 2000, PP 722 – 725.